



ACRE OF BEAVER COUNTY

A Real Estate Education Community

ATTORNEY KRISTIE HORRELL OF SOUTHWESTERN PA LEGAL SERVICES TO SPEAK ON THE FAIR HOUSING ACT AT THE APRIL MEETING

Following up on last month's article on Emotional Support and Service Animals, our main speaker this month is Attorney Kristie Horrell of Southwestern PA Legal Services (SPLS). SPLS is the legal services organization which represents tenants and prospective tenants who believe they have Fair Housing Act violation claims against landlords in Beaver County.

Kristie's presentation will cover many facets of the Fair Housing Act, and the types of conduct by landlords which she prosecutes under the act. She knows the applicable laws, the policies of her office as to which types of cases they will actively pursue, and the types of facts which commonly develop in these cases. Her active involvement in these cases on an ongoing basis makes her presentation extremely valuable to Beaver County landlords who want to avoid doing the things which would cause her office to bring an action against them under the Act.

We will have to be careful in our discussion of the particulars of individual claims, since Kristie herself represents several of the tenants who have sued

landlords I represent in Beaver, Washington, and even Lawrence counties. Last month when Kristie spoke at Acre of Washington County, we realized during our discussion of issues involving disabled tenants under the Fair Housing Act and the Americans with Disabilities Act that we were both involved in a Lawrence County case involving the eviction of a blind tenant, and we had to avoid discussing the details of that pending case.

With that caution about particular cases, don't be afraid to bring your questions on hypothetical cases you may encounter, so you can be prepared with the right way to handle these types of situations before they become expensive legal problems. Kristie's program will provide an overview of covered dwellings, prohibited practices, particular issues involving tenants with disabilities, and will even discuss some PA laws that add to protections for tenants under Federal Law. The program will qualify those who attend and sign in for an hour of Fair Housing Training toward your Professional Housing Provider certification through ACRE and National REIA. ■

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WHY CHOOSE ABC:

- **Network** with local investors
- **Attend presentations** by local leaders and experts on industry related topics
- **Meet local contractors and professionals** who are eager to work with investors
- **Get updates** on state and national issues from PROA and National REIA

ACTIONS TO QUIET TITLE IN PENNSYLVANIA

By Bradley S. Dornish, Esq.

In Pennsylvania there existed a long history of various different actions in equity, such as a "bill quia timet," which were designed to clear different types of clouds on the title to particular parcels of real estate within the Commonwealth. As part of an effort to streamline and simplify legal proceedings in Pennsylvania, Rule 1061 et. seq. of the Pennsylvania Rules of Civil Procedure, creating an action at law to quiet title in 1947. Since the adoption of these rules and the creation of this action, an action at law to quiet title has been the exclusive way to clear title to real estate

except in actions involving injunctions, which are still handled in equity, and not at law.

The purpose of a quiet title action is to resolve a conflict over an interest in real property. It is not an eviction action or an ejectment action addressing possession of the property, but an action to resolve competing claims to or open clouds on title. In fact, under PA R.C.P. 1061(b)(1), an action to quiet title may not be used when an action in ejectment is available. The interest in real estate subject to a quiet title action can be the entire fee simple interest in the property, or some lesser interest in the property, such as an easement, a mortgage, or even mineral or oil and gas rights.

Generally, an ejectment action can be used by someone out of possession of real property to obtain possession under a claim of title superior to that of the person in possession of the property. Conversely, a quiet title action is normally brought by someone who is in possession of property to extinguish the rights of others which cloud his or her title and could otherwise be used to challenge that that title, ultimately affecting their continued possession. If a plaintiff files a quiet title action where an ejectment action was the correct form, some Pennsylvania courts have allowed the amendment of the complaint to plead the correct form of action. Plauchak v. Boling, 439 Pa. Super. 156, 653 A.2d 671 (1995).

However, there are many instances where someone who is not in possession may not be able to bring an ejectment action because they do not or may not have the right to full possession of the property even with the title they seek to prove. For example, a landlord under a valid and ongoing lease who also gave the tenant a recorded option to buy the property, or an agreement of sale to buy the property, of which a memorandum was recorded, would not have the right to immediate possession of the property because of the lease, even if the option or memorandum of

agreement creating a cloud on the title were cleared. Therefore, an ejectment action would not be available to that landlord, and he or she would be able to file a quiet title action. Brennan v. Shore Brothers, Inc., 380 Pa. 283, 110 A.2d 401 (1955).

Quiet title actions are also used by former owners of real estate which has been sold at tax sale or judicial sale to attack defects in the sale which would invalidate the deed by which they lost title, and by purchasers of property at tax or judicial sales to clear or confirm the deed by which they obtained title. Pa. R.C.P. 1061(b)(4). We often file quiet title actions to clear old mortgages which have not been satisfied in the Recorder of Deeds' office, to clear an old easement or right of way which hinders further development of the parcel, or to clear the interest of someone whose signature was missed long ago on a deed in the chain of title to the property. These actions are necessary so that owners can sell or mortgage their properties and get clear and insurable title.

Sometimes, the title insurers will allow us to issue the title insurance on the properties without exception for the cloud on the title. This is possible only if the cloud is of the type which will clearly be able to be removed by the quiet title action, we escrow the cost of the quiet title action, and our law firm agrees to pursue that action on behalf of the owners of the property. In these instances, it is clearly an advantage to the buyers to use a settlement or closing company affiliated with a law firm known to the title insurance company to be experienced in and capable of handling quiet title actions. Without the law firm escrow arrangement for a quiet title action, the sale or refinance would have to wait for the title to be quieted before closing, meaning the seller would not have the sale proceeds or the refinancing owner would not have the loan proceeds from which to pay for the quiet title action. (*Cntd. on page 3*)

WHY BECOME AN ACRE MEMBER?

ACRE aims to educate its members to make the best possible real estate decisions and to become better real estate investors. Local seminars by local experts are offered to share first-hand experience and advice. Some seminars are held at the Baden location, while many others are held in Pittsburgh. The meetings are typically three hours and some are offered two in a day to give you more choices.

Membership in ABC entitles you to discounts on all seminars at all ACRE locations.

ACTIONS TO QUIET TITLE IN PENNSYLVANIA *(Ctnd. from page 2)*

Quiet title actions can also be used to determine the respective interests of different parties claiming an interest in real estate to oil and gas rights related to the property. These actions are becoming more common in Pennsylvania as landowners seek to enter into gas leases, only to have a thorough title search by the gas company before they pay the owner reveal competing claims to the gas rights and royalties.

Quiet title actions are also used by those who believe they have met the time and possession requirements for adverse possession to take the title from the record owner through the determination of the court. Adverse possession is the subject of another entire article, so it won't be discussed here at greater length.

Finally, a quiet title action can be used by someone in possession of property to force someone else to file, record or satisfy of record a document affecting title, or to compel someone who has threatened to file an ejectment action, but has not yet filed, to move forward with the action or lose the right to do so in the future. Roberts v. Estate of Pursley, 700 A.2d 475, (Pa. Super. Ct. 1997).

Once it is determined that a quiet title action is the appropriate action to address the title problem affecting the property, the process under the rules is relatively simple and the time line to completion of the actions shorter than many other lawsuits. The action must be filed in a county where all or part of the land in question is located. Pa. R.C.P. 1062. It can be started by a complaint by one party against the others who have apparent interests in the record title to



the property. In the alternative, if both parties agree that the court should resolve the title to the property between them, an amicable action to quiet title can be used instead of a complaint, saving time and attorneys' fees. Pa.R.C.P. 1063.

The quiet title action is a non-jury action heard by a judge. Pa. R.C.P. 1067. The action follows the rules for civil actions except as modified by the specific rules for these actions. The complaint in a quiet title action must state who is in possession of the property. It must also identify any statutes, such as the adverse possession law, which give the plaintiff the right to file the action. If there are deeds, mortgages, easements or other writings upon which the action is based, they should be attached to the complaint. The complaint must also identify with specificity the land which is the subject of the action. This may already be in the deed or other documents attached, but in some cases, such as certain adverse possession claims, it may be a claim to only part of a property identified in a deed.

Once the complaint is filed, service of the complaint can be a complicating factor. Many defendants cannot be found, particularly when the quiet title involves an old private mortgage, an old

easement, or an heir whose signature was missed long ago. These actions require more effort to find and serve the defendants, but after a good effort, courts are likely to allow service by posting or the more expensive publication in a newspaper of general circulation in the county where the property is located. The rest of that type of case usually moves quickly due to lack of opposition.

Once served, a defendant can of course file preliminary objections if the complaint does not meet the above requirements. It has been my experience that judges liberally allow amendments of the complaints in these types of actions to allow for correction of errant complaints, but the procedure causes delay and increases legal fees for both sides. A defendant in a quiet title action can file with an answer a counterclaim which is contractual (as opposed to a tort claim for negligence, for example), and which arises from the same circumstances as the quiet title claim. If the defendant who files a counterclaim wants to quiet title in his or her name, however, that must be plead as a counterclaim or can be lost. Carringer v. Taylor, 402 Pa. Super. 197, 586 A.2d 928, (1990).

The Rules provide that the plaintiff who files the quiet title action has the burden of proving the facts which support his claim to title, but the burden of proof is a mere preponderance of the evidence, often described as tipping the scales by the weight of a feather. Poffenberger v. Goldstein, 776 A.2d 1037, Pa. Commw. Ct. 2001). In cases where the defendants don't appear to defend their claim to title, the standard is usually very easy to meet. *(Ctnd. on page 8)*

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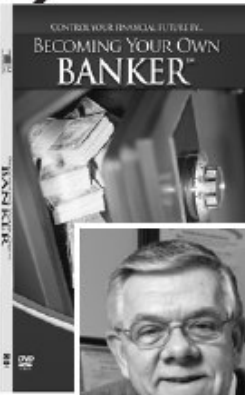
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I have lived in Beaver County my whole life, own investment property here, and help other members of ACRE of Beaver County achieve their investing goals.

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THE DEAL FOR VENDORS

By Brad Dornish

One reason we run ABC is to connect local investors with local vendors who can help in real estate investing. Of course, I'm not just an investor, but a real estate lawyer, owner of a settlement company and publisher of real estate how-to books. That makes me a vendor too.

We are offering three **different levels for vendors (Premier, Gold and Value)**, so you can test the waters or jump right in. All levels get an advertisement in our e-newsletter sized according to level, with online links available. All vendors get to come to the monthly meetings, be introduced at the beginning of the meeting and network with the investors who are there. All vendors also get our monthly e-newsletter to keep up on speaker and



event schedules and articles of interest to investors.

Premier vendors, for \$350 per year, get a half-page ad in each monthly newsletter and an opportunity to speak at a monthly meeting as a Vendor Speaker, the right to put materials on tables during meetings as available, and the first chance to sponsor coffee and snacks at meetings and workshops.

Gold vendors, for \$200 per year, get a quarter page ad in the e-newsletter, the right to speak at a meeting or other event and the second chance to sponsor coffee and snacks. Gold members get NO table for literature at meetings, however.

Finally, **Value vendors** get a business card ad in the e-newsletter only, for \$125 per year.

Look for information on ACRE Approval for vendors soon. Under this program, vendors who agree to mediate disputes with ACRE members, who offer discounts to ACRE members, and who do not have an unreasonable number of complaints will be able to advertise their "ACRE Approved" status to let all of our members know they not only advertise, but meet the standards our members expect. ■

THE DEAL FOR MEMBERS

By Deb Dornish

The ACRE of Beaver County yearly membership fee is \$99.00. Each new paid member will receive "Investing Basics," a CD Seminar from BD Productions, LLC with a retail value of \$99.00. All members receive a monthly e-newsletter, attendance at all Beaver meetings and up to two meetings per year at ACRE of Pittsburgh, plus member discounts to all programs of ACRE of Beaver and ACRE of Pittsburgh.

Members of ACRE are also members of the Pennsylvania Residential Owners' Association (PROA) and members of the National Real Estate Investors' Association, with both of which ACRE is affiliated. Both the state and national groups have more benefits for our members. ■

DETAILS ON UPCOMING EVENTS

■ **The World Famous Rehabbers House Tour, Sat, April 23, 2011, 8:30 AM-1:00 PM, Meet at the W. Liberty Ave. McDonald's** Thinking about doing a "fixer-upper"? Or want to do one with a greater profit? Join the tour of several houses in the Pittsburgh area and learn to determine the value of a property in order to make an intelligent investment decision. Space is limited, register today! ACRE Members Only: \$69

* For more information and to register, contact Debbie Roppo at 724-869-0129 or email info@acrebeaver.com.

ACTIONS TO QUIET TITLE IN PENNSYLVANIA *(Ctnd. from page 3)*

Once the judge decides the quiet title action, an appeal is more difficult to win, since the appellate courts are limited to reviewing whether the trial court's findings are supported by competent evidence. Watkins v. Watkins, 775 A.2d 841 (Pa. Super. Ct. 2001). The appellate courts don't typically reverse trial courts in quiet title actions absent a capricious or reckless disregard of the evidence.

Overall, quiet title actions are versatile, relatively quick, taking only a few months most of the time, and relatively

inexpensive; we usually estimate under \$2,500.00 in court costs and attorneys' fees unless there is strong opposition. They are a useful tool in clearing all sorts of title problems, and making sales, refinances and developments happen. Every real estate investor should know enough about quiet title actions at least to consider the possibility before walking away from a transaction with a clouded title. ■



MEETING SCHEDULE:

*Meetings are held the third Tuesday of every month.

6:30 PM.....Vendor Setup and Networking

7:00 PM.....Meeting Commences;
Introduction of Vendors

7:20 PM.....Teaching Segment

7:40 PM.....Vendor Speaker

7:55 PM.....Properties for Sale

8:05 PM.....Main Speaker

9:05 PM.....Q&A

9:30 PM.....Meeting Adjourns

Remember to bring your properties for sale
and ideas for future speakers!

Next Meeting:
Tuesday, April 19, 2011
Baden Municipal Building
149 State Street
Baden, PA 15005



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